IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.289 OF 1998

Nukem Industries Pvt.Ltd. ...Petitioners

Versus

Pfimex Organics Ltd. ...Respondents

.....

Mr.A.A.Jain for Petitioners.

None for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 7, 2005.

P.C.

1. Heard Counsel for the Petitioners. None appears for the Respondents though served and have entered appearance through Counsel. No reply has been filed on behalf of the Respondent Company.

2. The case of the Petitioners is that they have sold and delivered goods to the Respondent Company under one invoice in the sum of Rs.1,43,648/- (Rupees One Lakh Forty-three Thousand Six Hundred Forty-eight) in June 1995. The

Respondents have accepted the delivery of goods so supplied. The Respondents have also acknowledged the liability to pay the amount. There is nothing on record to even remotely suggest that the Respondents have either questioned the quality of goods supplied or disputed the liability for any reason whatsoever. The Respondent Company has acknowledged liability to pay the amount vide its letter dated January 20, 1997, but expressed inability on account of financial constraints. Inspite of repeated demands, as no payment was received, Petitioners eventually sent statutory notice on 19th January 1998. No response was given to the statutory notice nor any amount was offered to the Petitioners. Eventually, present Petition under Section 439 of the Companies Act has been filed by the Petitioners in this Court.

3. Notice of the present Petition has been served on the Respondents. As mentioned earlier, no reply has been filed by the Respondents. In that sense, the assertions made in the Petition have remained uncontroverted. As a consequence, the legal presumption against the Respondent

Company that it is unable to pay its debt has gone unrebutted.

4. In the circumstances, this is a fit case to allow the Petition in terms of prayer clauses (a) and (b). Ordered accordingly.

5. Official Liquidator to forthwith take possession of assets and properties of the Respondent Company and proceed in accordance with law.

A.M.KHANWILKAR, J.